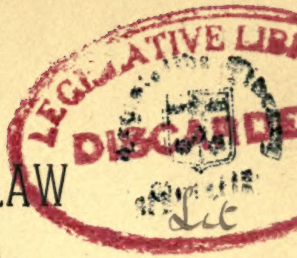
LAW & LAWYERS

JOKE-UPON-LITTLETON

STORIES OF THE LAW AND LAWYERS.



STORIES OF THE LAW AND LAWYERS

BY

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CONTENTS.

REMARKS FROM THE BENCH.

Stories of the Law and Lawyers.

REMARKS FROM THE BENCH.

THE prolixity of counsel has provoked much good and bad-humoured interruption from the Bench; and first for the good:—In Mr. Justice Darling's Court a few years ago, counsel, in cross-examining a witness, was very diffuse, and wasted much time. He had begun by asking the witness how many children she had, and concluded by asking

the same question. Before the witness could reply, Justice Darling interposed with the suave remark—"When you began she had three."

Of the same genial order was the retort of Justice Wightman to Mr. Ribton when that counsel, in addressing the jury, had spoken at great length, repeating himself constantly and never giving the slightest sign of winding up. He had been pounding away for several hours, when the good old Judge interposed, and said, "Mr. Ribton, you've said that before." "Have I, my Lord," said Ribton, "I am very sorry; I quite forgot it." "Don't apologize, Mr. Ribton," was the answer. "I forgive you, for it was a very long time ago."

With these two creditable specimens of kindly, spontaneous humour, compare the remark of a United States Judge, which was much praised in the press at the time it was made, but which in our opinion is far inferior to Justice Darling's impromptu. The American visited the Court of Appeal, and was invited by the late Lord Esher to take a seat on the bench. A certain Queen's counsel was addressing the Court. "Who is he?" asked the Yankee. "One of Her Majesty's Counsel," replied Lord Esher. "Ah," said the American, "I guess now I understand the words I have heard very often since I have been in your country, 'God Save the Queen.'"

LORD ELLENBOROUGH'S WIT.

But of a different order to any of the foregoing was the bitter wit of Lord Ellenborough, who frequently made counsel feel the keen edge of his sarcastic tongue. When Preston, the great conveyancer, gravely stated to the Court of the King's Bench the platitude that an estate in fee simple was the highest estate known to the law of England, the Chief Justice said, with politest irony, "Stay, stay, Mr. Preston, let me take that down. 'An estate (the judge writing as he spoke)—in fee simple—is the highest estate—known to the law of England.' Thank you, Mr. Preston; the Court, sir, is much indebted to you for the information." And again,

having inflicted on the Court an unspeakably dreary oration, Preston, towards the close of the day, asked when it would be their Lordships' pleasure to hear the remainder of his argument, whereupon Lord Ellenborough, with a sigh of resignation, answered, "We are bound to hear you, and we will endeavour to give you our undivided attention on Friday next; but as for pleasure, that, sir, has been long out of the question."

Such remarks, directed against a tough, long-winded veteran, well seasoned to the rough give-and-take of the law courts, were quite proper, but not so the chilling observation of the same judge to a young man who was making his first appearance in court. "The unfortunate client

for whom it is my privilege to appear," said the youthful barrister, "the unfortunate client for whom I appear—hem—hem—the unfortunate client for whom I appear." Leaning forward, and speaking in a soft voice that was all the more derisive because it was so gentle, Lord Ellenborough said, "You may go on, sir; so far the court is with you." A cheap witticism! And yet we have heard it retailed with gleeful approval and received with laughter. We refrain from further criticism, but simply contrast it with the conduct of Mr. Justice Talfourd on a similar occasion. Seeing a young barrister overpowered with nervousness, he gave him time to recover himself by saying in the kindest possible

manner, "Excuse me for interrupting you, but for a minute I am not at liberty to pay you attention." Whereupon the judge took up his pen and wrote a short note to a friend. Before the note was finished the young man had completely recovered his self-possession, and by a thoroughly good speech secured a verdict for his client. "Talfourd might have made a jest for the thoughtless to laugh at, but he preferred to do an act on which those who loved him like to think," is the apt comment of the writer who tells this story.

Yet Lord Ellenborough knew on occasion that, notwithstanding the most tempting opportunity, a joke would be inappropriate. In the instance we are

to give he probably thought that the ridiculousness of the argument was so sublime that it could not be any further enhanced. Counsel, Mr. Gasalee, was endeavouring to make out that mourning coaches at a funeral were not liable to post-horse duty, and proceeded thus : " My Lord, it could never have been the intention of a Christian legislature to aggravate the grief which mourners endure whilst following to the grave the remains of their dearest relatives by compelling them at the same time to pay the horse duty." Lord Ellenborough made no remark beyond saying, " Mr. Gasalee, you incur danger by sailing in high sentimental latitudes." He knew that Mr. Gasalee had no turn for raillery.

A FLIGHT OF ELOQUENCE.

Not always, however, does a counsel who indulges in lofty flights of eloquence escape so easily. Mr. Justice Byles was once hearing a case in which a woman was charged with causing the death of her child by not giving it proper food or treating it with the necessary care. The defending counsel, in addressing the jury, said: "Gentlemen, it appears to me to be impossible that the prisoner can have committed this crime. A mother guilty of such conduct to her own child! Why, it is repugnant to our better feelings." Then, being carried away by "the exuberance of his own verbosity," he went on: "Gentlemen, the beasts of the field, the

birds of the air suckle their young, and "—— But at that point the learned judge said: "If you establish the latter part of your proposition, your client will be acquited to a certainty."

AN EFFECTIVE HIT.

The most effective hit at counsel ever made from the Bench was one of which that doughty veteran, Lord Bramwell, was the victim, when he was at the bar. Himself, when later he became a judge, the author of many excellent judicial dicta, he, while at the bar, disliked exceedingly, and was continually complaining of, judges interrupting counsel. On one occasion, when he was arguing a case in the Exchequer Chamber,

he had been much interrupted by the judges. Chief Justice Jervis, who presided, asked him, when the time for adjournment arrived, if he could conclude his arguments that day. He replied it depended on whether he was interrupted or not. The Chief Justice said it must be adjourned. Bramwell said that he hoped to finish in about an hour next morning. The Chief Justice, as he was leaving, said: "Mr. Bramwell, you will not be interrupted to-morrow, as the judges will not be here." Mr. Bramwell had forgotten that the sittings terminated that day!

Sir John Hollams, who relates this story, and who was with Mr. Bramwell at the time, does not tell us what he said, but if

he did give expression to his feelings we can imagine he would do so in no measured terms, and his language would be vigorous, for he was a most trenchant speaker, and the judgments and dicta pronounced by him when on the bench are impressive in their native force and originality. "A natural right to land!" he once exclaimed, on hearing that oft-used saying, "all rights in a state of society are artificial." "It might as well be said that I had a natural right to a box at the opera," and again, "I do not understand legal fraud. It has no more meaning than legal heat or legal cold, legal light or legal shade;" and many more

RETORTS FROM THE BAR.

RETORTS FROM THE BAR.

THE "judicial humourist" is common. Humour at the bar, on the other hand, is comparatively rare, the reason being that a lawyer pleading a case is, for obvious reasons, chary of scoring off the judge even though he could. It was on account of this that Campbell, Lord-President of the Court of Session, who was somewhat addicted to brow-beating counsel, usually got it all his own way. Upon one occasion, however, he caught a tartar. His Lordship had what are termed little pig's eyes and

his voice was thin and weak. Counsel, a Mr. Corbet, had been pleading before the Inner House, and was attacked in usual style by the President, when he thus addressed him. "My Lord, it is not for me to enter into any altercation with your Lordship, for no one knows better than I do the great difference between us; you occupy the highest place on the bench, I the lowest at the bar, and then, my Lord, I have not your Lordship's voice of thunder, I have not your Lordship's rolling eye of command."

LORD WESTBURY.

But the most outstanding exception to the general rule was Bethell, afterwards Lord West-

bury, who confessedly adopted as a ruling principle the maxim : "Never give in to a judge," and his overwhelming egotism enabled him to successfully carry off situations that would have brought a less fearless man to grief. All his sayings have a touch of bitterness and cynicism, and in reading those accounted most brilliant one somehow feels that they savour of what might be termed colossal cheek rather than legitimate repartee. "Take a note of that," he once said in a stage aside to his junior. "His Lordship says he will turn it over in what he is pleased to call his mind." The discursive habits of Lord Justice Knight Bruce he detested. "Your Lordship," he once pointedly cut short an obser-

vation of that judge by declaring, "Your Lordship will hear my client's case first, and if your Lordship thinks it right, your Lordship can express surprise afterwards." And all the gratitude that fell to the successful suggestion of one of his juniors was the *sotto voce* remark, "I do believe this silly old man has taken your absurd point."

"SCENES" WITH JUDGES.

There never were any "scenes" with Westbury, for he was a man of such strong personality that the judges generally let him have his own way. "Scenes" occur with judges who have weaknesses or fads or some *bete noir* which distort their vision, and which they persist in intruding into a case.

Sir William Bovill was not a satisfactory judge. He had a fondness for perpetually interrupting and putting forward views of his own, and imputing unfair conduct to counsel and solicitors. In one trial, Mr. Edwin James began his speech to the jury by saying that he greatly regretted that so much of their time had been wasted, but for this neither he nor his opponent, Sir George Honyman, was to blame. Continuing, he said that, as the jury were aware, it was the province and duty of counsel, before a case came into court, to study it with the view of presenting the material facts to the jury. But his Lordship, who filled an office for which he had the highest respect, but who could have known nothing

whatever of the case before it came into court, had deemed himself far more competent to deal with the case than either his learned friend or himself, and thus there had been great waste of time, to the inconvenience of the jury and the prejudice of all concerned.

To make a dignified protest like that is one way of dealing with such a judge. Another way is to play up to him. Vice-Chancellor Malins was obsessed with the idea that counsel were there to mislead him and obfuscate his mind, and this being well known, they could not resist the temptation to indulge in the sport of worrying him. He was hearing a case once in which the following were the facts: A traveller who had been

hurt on the railway had been compensated, and signed a receipt in full. Some months afterwards he applied to have the compromise set aside on the ground that the shock of his accident had made him dumb or stupid, and that his mind did not go with his act when he signed the receipt, and that he since had another shock which restored him to reason. The Vice-Chancellor said: "Mr. Glass, I never heard of a case like this before. Is there any precedent?" That famous counsel turned to his junior and said: "What was the name of the husband of Elizabeth?" and the junior having told him, Mr. Glass said, "Oh, yes, your Honour, "there is the case of Zacharias." "Where is that re-

ported, Mr. Glass ? " Counsel's reply, of course, confirmed him in his belief in the uniform disingenuousness of barristers in general.

AN AUDACIOUS MOVE.

Mr. Justice Denham's court was once crowded in anticipation of a scene between him and Charles Russell, afterwards Lord Russell of Killowen, but an audacious move on Russell's part disappointed the onlookers. On the previous afternoon some very high words had passed between bench and bar, and Russell's vehemence caused the judge to say that he would not trust himself to reprove him in his then condition of sorrow and resentment, but would take the

night to consider what he ought to do, and when they met again the next morning he would announce his determination. In considerable commotion the court broke up, and on the following day Mr. Justice Denham, on taking his seat, commenced the business of the day by saying: "Mr. Russell, since the court adjourned last evening I have had the advantage of considering with my brother judge the painful incident——" Upon which Russell quickly broke in with—"My Lord, I beg you will not say a word more upon the subject, for I can honestly assure you that I have entirely and forever dismissed it from my memory," a turning of the tables which provoked such a roar of

laughter in the court that even the learned judge himself could not but join in it.

GENIAL FRANK LOCKWOOD.

Russell's handling of that delicate situation irresistibly reminds one of how Frank Lockwood once grasped a situation, not so serious certainly as that in which Russell was placed, but in which his demeanour was every whit as creditable to his ready wit, even more so, as it must have been utterly unpremeditated, and he was at the time a newly-called barrister. It is the ancient custom for the new Lord Mayor of London, attended by the Recorder and Sheriffs, to come into the Law Courts and be introduced to the

Lord Chief Justice, or, if he is not there, to the senior judge to be found on the premises, and, after a little lecture from the bench, to return good for evil by inviting the judges to dinner, only to receive the somewhat chilling answer, "Some of their Lordships will attend." On this occasion the ceremony was over, and the Lord Mayor and his retinue were retiring from the court, when his Lordship's eye rested on Lockwood, who, in a new wig, was one of the throng by the door. "Ah, my young friend," said the Lord Mayor, in a pompous way, "picking up a little law, I suppose?" Lockwood had his answer ready. With a profound bow, he replied: "I shall be delighted to accept your Lordship's hospitality. I

think I heard your Lordship name seven as the hour." The Lord Mayor hurried out of court.

The genial Frank Lockwood! We know him only in the pages of Mr. Birrell's "Life," but how sure we feel that there was no bitterness in his repartees, no egotism, his jokes caused merriment to all and pain to none.

CROSS-EXAMINATION INCIDENTS.

CROSS-EXAMINATION INCIDENTS.

CROSS-examination is admittedly the most difficult of all the varied work to which a lawyer is called to turn his hand, how difficult only those who have tried it can appreciate. To dwell for a moment on an aspect of the matter somewhat professional, there are, generally speaking, two schools of cross-examination. One is known by the description which is always sure to appear in the headlines to a newspaper report of a sensational trial, "Severe cross-

examination." By this method the witness is taken over the whole facts of the case and minutely catechised as to his acquaintance with them. Given a very skilful counsel and a flagrantly dishonest witness, this style may serve its purpose, but, as a general rule, witnesses tell some truth, are not fools, and are not inclined to be like clay in the hands of the examiner.

Not infrequently, then, the "severe cross-examination" gives an able witness the opportunity of emphasizing his evidence in chief and driving home points actually unnoticed in his first examination. The Tichborne claimant was subjected to a "severe cross-examination" before the Magistrate prior to committal, and, in the opinion

of Sir Henry Hawkins, it was out of the questions then put to him that he to a great extent fortified his case subsequently. A short cross-examination, on the other hand, leaves well or bad alone, and instead of attempting to prove the witness a liar out of his own mouth, relies on the testimony of other witnesses to nullify the objectionable evidence.

A QUESTION OMITTED.

But it may be dangerous to ask too little as well as too much. To minutely probe into statements may seem to be, and not seldom is, wasting the time of the court, but not always. "I was counsel," narrates an American lawyer, "for a railway

company, and I won the case for the defence mainly on account of the testimony of an old coloured man who was stationed at the crossing. When asked if he had swung his lantern as a warning, the old man swore positively, " I surely did." I subsequently called on the old negro and complimented him on his testimony. He said, " Thankee, Marse John, I got along all right, but I was awfully scared 'cause I was afraid dat lawyer man was goin' to ask me was my lantern lit. De oil done give out befo' de accident !'

And now for an instance of asking too much. At a trial for murder, on circuit, a Welsh advocate was instructed for the defence by one of the leading local practitioners. The counsel

was a very peremptory little man, and during cross-examination he declined to put a certain question suggested by the gentleman instructing him. The solicitor pressed him again and again on the point, but still he refused. "Well, sir," said the solicitor at last, "these are my instructions, and mine is the responsibility, therefore I insist upon you putting the question." "Very well," said the barrister, "I'll put the question, but remember, as you say, yours is the responsibility." The question was put and the result was that it contributed in a large degree to hanging the prisoner. The sentence having been pronounced, the barrister turned round in a fearful rage to the solicitor and exclaimed, "When you meet

your client in hell, which you undoubtedly will, you will be kind enough to tell him it was your question and not mine."

That story is found in the reminiscences of Mr. Montagu Williams, and his unique experience gives weight to what he says regarding cross-examination "Of all the duties of a counsel that of cross-examination is, in my opinion, the most difficult one in which to acquire proficiency. Few have excelled in it. It is a dangerous weapon, and the true art lies in knowing either where not to put any questions at all, or the exact moment when to stop putting them."

"THEY CALL HER COCK ROBIN."

Serjeant Parry, a counsel of ripe experience, was briefed to defend the manager of a company of gymnasts, charged with unlawfully attempting to take a girl of 16 out of the possession of her father. The girl, young and of prepossessing appearance, told her woeful story with tears, and an obvious impression in her favour was made on the jury, which was not in the least shaken by the Serjeant's cross-examination. The whole case turned on the question of the respectability and previous good character of the prosecutrix. Her sister was also examined as a witness, and in answer to a question regarding a male cousin,

made the following reply: "Yes, I remember him coming to our house and asking for my sister. He asked for her by her nickname." Quick as lightning the Serjeant seized the point. "Nickname, what is her nickname?" The witness replied, "They call her Cock Robin." Turning to his junior, and then with an indescribable look at the jury, Parry slowly and significantly repeated the words. "They call her Cock Robin." From that moment the case was at an end.

THE MAGISTRATE'S MOVE.

But it is not only in handling witnesses that a counsel has to be watchful, he must keep an eye on the bench and on the

jury, and what scope there is for adriotness in these directions can only be understood by those who have had some experience of the work. The two following stories must serve to illustrate the matter to the layman. The late Mr. Montagu Williams was once defending a friend charged with assaulting a solicitor with whom he had become financially involved. The money lent had been found for the solicitor by one Padwick, who was a magistrate for the county of Middlesex. During the trial this magistrate came and sat on the bench, a matter in which he showed very bad taste. While Williams was cross-examining the solicitor as to his financial transactions, he looked up to where Padwick was sitting. Whereupon Wil-

liams made the observation: "You need not look up there, sir; I am quite sure there is no one sitting there who would countenance such proceedings as you have admitted being a party to." Within a minute or two Padwick left the court. The reader may not think that very wonderful, yet a move like it, made in the anxiety, bustle, and heat of a trial, and while the mind was no doubt intent on a particular line of cross-examination, shows in a high degree judicious boldness and quick resourcefulness, yet all within the limits of good form.

AN INSTANCE OF TACT.

The second illustration we propose to give is a consummate

instance of tact. Prosecuting for the Crown in a revenue case where the principal witness was a King's evidence man, whose character had been cut to ribands in cross-examination, Rolfe, then a counsel at the bar, made no attempt to rehabilitate a scoundrel who had laid the information against his old accomplices. But he laid stress on a series of insignificant facts, in every one of which the witness was corroborated by the log-book of the sea captain who had brought the smuggled tobacco over from Ireland. "I put it to you," he said in his speech to the jury, "as honest and intelligent men, whether, when you see that every word the witness has spoken on all other points has been so completely

circumstantiated, you can doubt his evidence given on oath on the only remaining point necessary to establish the case." This was a totally new light to the jury, who had been carried away by the cross-examination, and without hesitation they returned a verdict for the Crown,

Many other instances might be given of the effect of cross-examination, but what has been said may help to impress on the reader's mind the great difficulty of the business, and if it also enables him in a measure to know whether a so-called "severe cross-examination" is utterly useless, absolutely harmful, or really skilful, so much the better.

FIRST BRIEFS AND EARLY STRUGGLES.

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THE chief glory of the law is the scope it gives for talent. By it a man may rise from humble station to the highest judicial and administrative offices. Brains, physique, perseverance, and some luck are the only necessary requirements. "Jock" Campbell himself, for instance, the son of a parish minister in Fife, going to St. Andrews as a bursar, tramping up to London, and ending his days as Lord Chancellor. Chief Justice Abbott, the son of a small hairdresser of Canterbury.

Example after example could be cited.

To the man without influence the great thing is to get an opportunity to show what is in him. In a famous song, Gilbert touches on this point:

> " In Westminster Hall I danced
> the dance
> Of the semi-despondent fury,
> For I thought I would never hit
> on the chance
> Of addressing a British jury."

The barrister there depicted got his chance by falling in love with a " rich attorney's elderly, ugly daughter." But we turn from such cold-blooded design to cases where seeming accident did a good turn to the young barrister.

LORD WESTBURY'S BEGINNING

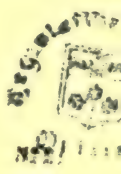
Two of the greatest men of the last century, both Lord Chancellors, were Westbury and Cairns. Both were destitute of social or professional influence, and the story of how they came to be known cannot be told too often. Brasenose College, Oxford, had found itself involved in a suit which threatened a severe reduction of its revenues. While the Principal and Fellows were anxiously making themselves ready for battle, Dr. Gilbert, the head of the college, bethought himself of Mr. Bethell, as the future Lord Westbury was then styled. He had been so strongly impressed by the fluency and grace with which, as a young scholar of Wadham, he

had translated a strophe of Pindar in the "viva-voce" examination for his degree, that he insisted upon retaining him in spite of his short standing at the Bar. By Bethell's advice, in the teeth of that given by several eminent counsel, the College refused to compromise, and when the suit came on the arguments of Bethell were found irresistible, and he made his first great stride to the front.

THE INDUSTRIOUS APPRENTICE.

Cairns began without any connection whatsoever, and his first start entitles him to be regarded as a standing example of the industrious apprentice. In accordance with that time-honoured precept which has brought

so much disappointment to less fortunate youths, he had made it his rule never to be absent from chambers during business hours. One Saturday, when he had been invited to join a water party, at which. legend has it, the future Lady Cairns was to be present, he explained that duty required him to remain in his chambers till four o'clock. There were no papers requiring his attention, and the courts rose at two, but he was adamant to pressure and ridicule. As he was closing his books about five minutes to the hour there came a rap at the door. A member of an influential firm of solicitors had been drawing Lincoln's Inn without success; their regular counsel had risen, and oak after oak was found sported. The



matter brooked no delay, and application was made in despair to the first gentleman whose door was not locked. Fortunately for both parties the solicitor lighted upon one who was more than equal to the task, and the mastery of his business which Cairns displayed gained him a client for life.

AN OLD COAT BRIEF.

In these instances it will readily be conceded that there was an element of genuine deserving merit, as well as luck. But as an example of how a beginner may be helped on in his profession by the purest accident, take this personal experience related by Mr. Pitt Lewis. "One day," he writes,

"I was sitting at the extreme end of the row of the junior bar in the old Queen's Bench Court at Westminster. From a small window in the robing-room upstairs the whole of the bar could be seen. The managing clerk to a firm of solicitors, having in his hand a brief for counsel, went up to the robing-room and asked Mr. Howard, the manager, whether he could tell him the name of a junior counsel to whom the brief could be delivered. Now, Mr. Howard had on his staff an attendant named "Ben," a very worthy man to whom I had shown some trifling kindness, such as asking him about his health, and to whom I had given an old coat and a Christmas box. Ben seized hold of the clerk and led him to the window, pointed

me out to him, and advised him to entrust the brief to me. Down came the clerk and delivered the brief to me. Starting with that old coat brief, I got a large amount of business with the firm of solicitors from whom it came, for at that time they had all sorts and conditions of cases abounding in appeals, and involving important interests."

UNEXPECTED GOOD FORTUNE.

Yet stranger was the piece of unexpected good fortune that came to Cockburn, afterwards Chief Justice, when acting as junior on the Western Circuit. It arose in this wise. Lord-Chancellor Brougham had an objectionable habit of working

off the arrears of his multifarious private correspondence while on the bench. He defended this practice by maintaining with characteristic conceit that he could easily write a letter, and at the same time follow a legal argument. But the opinion of the Bar was different, and loud and bitter were the complaints of counsel and solicitors. It is an ill wind, however, that blows good to no one. A year or two after his call, Cockburn had a motion in the Chancellor's Court. Brougham was engrossed with his correspondence, and took no notice of the argument except to say curtly at the conclusion of counsel's speech, "Motion refused." On the following Western Circuit, Mr. Cockburn

was astonished by the delivery at Exeter of four briefs from a solicitor of whose existence he had hitherto been ignorant. Having satisfactorily disposed of the cases, he asked the client the reason for which he was indebted to this sudden patronage. "I was in the court, Mr. Cockburn, when you made that motion, and when I saw the Chancellor taking down every word you said, I made up my mind that if ever you came to Exeter you were the man for my money."

AN UNUSUAL SCENE.

The foregoing incidents show opportunity coming to the beginner, but many tales could be told of a man making his

opportunity, going to meet the occasion, as it were, and seizing it. In these many illustrious names would figure, but probably the most striking of such feats was by Benjamin, the famous American, who, having taken refuge in this country on the defeat of the South, was called to the English Bar when over sixty years old. Shortly afterwards he received a junior brief in an American case. The case came on for hearing, and the court were on the point of continuing it for further inquiry when Benjamin, then unknown, rose from a back seat. He had not a commanding presence, and had rather an uncouth appearance. In a stentorian voice he startled his hearers by saying, "Sir, notwithstanding the some-

what off-hand manner in which this case has been dealt with by my learned friend, Sir Roundell Palmer, and to some extent acquiesced in by my leader, Mr. Kay, if, sir, you will only listen to me; if, sir, you will only listen to me (repeating the words three times, and on each occasion raising his voice), I pledge myself you will dismiss this suit with costs."

The judges and all in court looked at him in great astonishment, but he went on without drawing rein for two or three hours. The court became crowded, for it soon became known that there was a very unusual scene going on. In the end the case was dismissed with costs, and this decision was affirmed on appeal. Nothing

could keep back such a man, and very soon Benjamin acquired an extensive practice

ADDRESSING THE JURY

ADDRESSING THE JURY.

ABOUT no other branch of our judicial system has there been so much controversy as trial by jury. It is all right in theory to refer a dispute to the verdict of twelve good men and true, but this does not take account of the frail human side of the twelve, how one may be prepossessed by prejudice, another susceptible to blarney, another apt to be carried away by the cheapest eloquence, another to whom the humorous side of things is irresistible, and so on through the twelve. But

it is to such men that counsel has to make his appeal, and unless he has sufficient knowledge of men to know how to appeal effectively, he may as well give up his job. He must watch how the jury are taking the evidence, whether they have been carried away by his opponent's arguments, and shape his own address accordingly.

SIR HENRY HAWKINS.

There have been many adepts in this art from the days of the great Scarlett downwards, but, keeping to modern times, a past master of the business was Sir Henry Hawkins, who made his reputation, and an enormous income along with it, in the palmy days of railway flotation,

being retained by the companies in every large compensation case. Compensation for property taken compulsorily was in those days assessed by jury. A chemist's shop happened to be scheduled for taking, and the owner claimed a large sum in name of goodwill. His counsel quoted precedents in support of his head of the claim, and the court were duly impressed. One of these precedents happened to be the case of a public-house. This gave Hawkins his clue, and in addressing the jury he gave them the following effective little homily on the law of goodwill :

" Gentlemen, if this chemist's shop had been a public-house, its situation might have acquired for it a goodwill value, for what more natural than for a man

walking past it to say to another who chanced to be with him, ' 'Ere Bill, 'ere's a public, let's go in an 'ave a drink,' but who ever heard of a man passing an apothecary's say to his friend, ' 'Ere Bill, 'ere's a chemist's, let's go in and 'ave a truss.' "

That argument was perfectly fair, it put the jury in a good mood, and undoubtedly helped to reduce the compensation.

A LITTLE HUMOUR.

The incident just related also illustrates, what every experienced pleader knows, how far a little humour goes with a jury. In a case in which Mr. Huddleston, who in early life had been a tutor, and ultimately became Chief Baron, and Serjeant Ballan-

tine were the opposing counsel, the former, in the course of his remarks, said, "My learned friend, Serjeant Ballantine, while making his speech, reminded me of the ostrich who buried his beak in the sand and imagined that nobody could see his tail."

Though there was nothing very striking about this witticism, Ballantine knew better than to let it pass unnoticed, and in his reply, after commenting on the merits of the case, referred to his adversary's remarks thus, "My learned friend has indulged in similes. He compares me to the ostrich who hides his beak in the sand, and imagines that nobody can see his tail. It does not surprise me in the least that he should

make use of that simile. I should say that he above all men ought to understand it, as the part he alludes to, if it were in the human frame, is the part that is most likely to catch the schoolmaster's eye."

BREACH OF PROMISE CASE.

A little human interlude like that is never lost on the jury. Probably the reason is that their untrained minds are so tired attempting to consider the abstract right and wrong of the case that anything funny comes as a welcome relief. This tendency, however, presents a great danger in cases where there is anything sensational. The jury may be so carried away by impressions gathered from the

interesting parts of the evidence as to disregard the true import of the evidence as a whole.

Sir Charles Russell was once appearing for the defendant in an action for breach of promise of marriage brought by a pretty girl against a wealthy man who had treated her badly. Some of the jury evidently sympathized with the plaintiff, and during her cross-examination one of them blurted out a strong leading question showing such animus that those in court thought Russell would decline to go on with the case before that jury. Instead, he turned round, looked sternly at the juryman, held him fixed for a few moments whilst he tapped his snuff-box, and, taking a pinch, said with quiet intensity,

"Attend to the evidence, sir." The effect on the jury of this rebuke was very marked. They all looked serious, listened attentively, and in the end found a verdict for the defendant.

POWER OF THE PLEADER.

And this brings us to consider an element which perhaps as much as any other influences the jury, the personality of the man who addresses them. "There are thirteen juryman in the box when Scarlett is speaking, was the tribute of an eye-witness to the personal influence of that great pleader, and stories illustrating this quality could be told of him and others. But when all is said about it that can be said, it defies analysis. Some

men have it, others have not—its secret is uncommunicable. There is accordingly little use in retailing these stories. But the following well-authenticated incident, which occurred at the Worcester Sessions some years ago, is a flagrant and amusing instance of a jury being swayed by a personal appeal.

It happened that the defendant's counsel had just been made a Queen's Counsel, and these were the last Sessions in the county he would attend. For a number of years he had been leading man in the county, and was a favourite with all classes. He was defending a man for horse-stealing, and the evidence against the accused was of the most damning character. He had been seen in

the immediate neighbourhood of the field from which the horse had been stolen shortly before the theft took place, he was seen driving the animal from the spot, and he was further identified as the man who subsequently sold the animal. At the close of the prosecution counsel addressed the jury in something like the following terms: "Gentlemen, I have been among you for a great many years. I was born in your county, and my people were with you for two or three generations. You have always been friendly with me, man and boy, and I don't think I ever had an angry word with any of you. A change has now come over my life. Her Majesty has sent for me to make me one of her own counsel."

The jurymen sat with open mouths, evidently under the impression that their favourite was about to be summoned to Buckingham Palace, Windsor Castle, or some other Royal residence to have a tete-a-tete with the Queen. Continuing, counsel said: "I shall never address you again. This is the last time my voice will be heard in your ancient hall. Let us part as we have always been, the best of friends;" and without a single word as to the merits of the case before the jury, he sat down.

The Chairman of the Sessions in the due discharge of his duty addressed himself to the evidence, ignoring entirely the observations by the counsel for the defence. The jury put their

heads together, and after barely a moment's deliberation, the foreman said: "We find for Muster——." The Chairman told them that their verdict must be either one of guilty or not guilty as against the prisoner. Whereupon, without waiting for their foreman, they all shouted out with one accord, "Not guilty, sir," and the prisoner was released.

AMERICAN.

AMERICAN.

A FEW casual references to American law and lawyers have crept into the foregoing chapters, but the wonder is that these are so few, for in America the lawyer is a far more prominent individual than here, and the yarns about him are countless. After perusal of very many of these we are forced to the conclusion that in humour, wit, and repartee the American lawyer is not the equal of the British. Why that should be we cannot pretend to say. Nevertheless, the humour of the American Courts, while smart

enough, cutting enough, funny enough in its way, gives an impression of artificiality and cheapness which depreciates it very much, and in the long run even nauseates the reader.

The hero of American legal humour is the nigger, and yet really good stories regarding him are comparatively few. These tales chiefly concern his notorious fondness for chicken stealing, his domestic squabbles, and his ridiculous pomposity and ignorance. Those of the first kind are so patently "made" that we refrain from giving any specimens. Those of the second order are not much better, but we give the following:—Aunt Caroline and the partner of her woes evidently found connubial bliss a misnomer, for the sounds

of war were often heard down in the little cabin in the hollow. Finally the pair were hauled into court, and the dusky lady entered a charge of abusive language against her spouse. The judge, who had known them both all his life, endeavoured to pour oil on the troubled waters. "What did he say to you, Caroline?" he asked. "Why, Jedge, I jes' cain't tell you all dat man do say to me." "Does he ever use hard language?" "Does yo' mean cussin'? Yassuh; not wif his mouf, but he's always givin' me dem cussory glances."

The third kind of story, that which arises out of the poor nigger's ignorance, is the most laughable. "Sign your name here, Uncle Rastus," said his

lawyer to a nigger client for whom he was selling a farm. "Ah doesn't write ma name, suh. Ah has no time fuh dem triflin details o' business. Ah allus dictates ma name, suh." One other instance. Having been cautioned by the prosecuting attorney not to let the counsel for the defendant trick him into altering his testimony, the old negro on the witness stand braced himself grimly for the ordeal of cross examination. He had just detailed on direct examination how he had seen the prisoner murder his victim, throw away his razor, and flee from the scene. "You say you saw this man drop his razor and run away?" demanded the counsel for defendant in challenging tone. "No, suh;

Ah nevah said dat," declared the witness. The attorney consulted his notes a moment, then turned fiercely on the witness again. "Do you mean to tell this Court and Jury," he thundered, "that you did not say a few minutes ago that you saw this defendant throw down his razor and run away?" "No, suh, Ah nevah did," insisted the old man stubbornly, "An' no lawyah can make me say somethin' Ah knows I didn't say." "Well, what did you say?" demanded the exasperated counsel. "Ah nevah said Ah saw him," responded the old darkey slowly, with dignity, "Ah said Ah seen him."

The story which we give next is not only a nigger story, but is also one of the best speci-

mens we have come across of the other main subject of American legal pleasantry, the alleged rapacity of the law practitioner. It is told at the expense of Mr. B. M. Allen, a famous criminal lawyer of Birmingham, Alabama. A negro client entered his office and said, "Mr. Allen, my brother is in jail, and I want to see what it will cost to get him out." The rapid growth of Birmingham had made the building of a large new jail imperative, and an imposing stone structure took the place of the old one, which was known as "the little brick jail." At the time Mr. Allen was being consulted the little jail had not been in use for a long time, except as a storage warehouse. When his negro client stated the

facts Mr. Allen saw it was a weak case, and that it would be easy to acquit the prisoner, and replied, "I can get him out all right, Sam, and it will cost you $25, but I won't turn a wheel until you go out and raise the money," that being the customary way of securing fees from the average negro. Sam happened to be a thrifty negro. He had that very day sold a farm for a large sum, and had the money in his pocket. He pulled out a large roll from his trousers pocket, and began to peel off a $20 bill, when Mr. Allen interrupted, "Look here, Sam; is your brother in the little red brick jail or the big jail?" "He's in de big jail, Mr. Allen," replied Sam. "Oh I thought you meant the little jail," said

Mr. Allen. "It'll take $50 to get him out of the big jail." And Sam paid the fee cheerfully. On that same subject of the lawyer's fondness for fees the following dialogue in court is in point. "Why do you want a new trial?" "On the grounds of newly discovered evidence, your honour." "What's the nature of it?" "My client dug up $400 that I didn't know he had."

A feature of American life is the lawyer who makes politics a trade, and gets an appointment in consequence. It is, therefore, not surprising to find him a target for the wits. One of these gentlemen, Schmidt, had but recently assumed the office of Collector of Taxes after a victory on a reform platform,

which had in view the collection of all just taxes. He industriously set himself to work reading the various taxation statutes, and as a result many citizens were sent bills for taxes of a nature they had never before received. O'Brien, who lived up on the Heights, was the recipient of a bill which read:—"to keeping two goats two years $16." O'Brien called at the office of the tax collector with blood in his eye, and, between gulps of exasperated rage, wanted to know why and by what authority he should pay a tax for keeping goats which never did anybody no harm, &c. Schmidt under fire couldn't well explain in apt language, so he opened the Code and read from Section 1492 on rate of taxa-

tion : — " Paragraph 13. All property abounding and abutting on the public highway, two dollars per front foot."

In our study of American legal humour we have been unable to find any notably witty dicta from the Bench or sallies from the Bar, but we give, in closing, an incident of a jury trial and a cross-examination story which are rather good. A well-known lawyer practising before the Court of Claims tells of a youthful attorney in Indiana who talked for several hours, to the great weariness of the judge, the jury, and everyone in the Court room who was obliged to listen. At last, however, he sat down, and the opposing counsel, a white-haired veteran, rose to reply. " Your honour," said he,

"I will follow the example of my young friend who has just finished and submit the case without argument." With that he took his seat, and the silence was oppressive. The other story is this:—In one of the County Courts recently a woman was testifying on behalf of her son, and swore that he had worked on a farm ever since he was born. The lawyer who cross-examined her said, "You assert that your son has worked on a farm ever since he was born." "I do." "What did he do the first year?' "He milked." The witness was asked no further questions.

THE JEW.

THE JEW.

FROM the days of Shylock downwards the Jew has been the subject of stories innumerable, all turning on his keen desire to squeeze and skin the Christian. It would be idle to deny that there is a solid basis of fact for this huge edifice of humorous anecdote, though, on the other hand, there is very often little distinction between the behaviour of Jew and Gentile in monetary transactions. It is not our purpose to revive any of these stories or even to retail fresh ones on the same subject, but to give the

experiences of some lawyers who in the course of professional duty encountered some of the Children of Israel. We hope that the saving touch of humour, feeble though at times that may be, will redeem those tales from all suggestion of malice; and we are not forgetful that the cool, powerful brain of the Jew has given to the legal profession some of its most brilliant ornaments, Herschell, a Lord Chancellor; Jessel, the famous Master of the Rolls, and Sir Rufus Isaacs, the present Lord Chief Justice.

The prejudice against the Jew, however, though far less intense than on the Continent, is not extinct in Britain by any means. In a money-lending transaction the redoubtable Serjeant Ballan-

tine was for the defence. The solicitor instructing him was a Jew. The defendant was a Jew likewise, and ere the trial was over things began to look very black for him indeed, the transaction ultimately appearing to verge on the fraudulent; but the Serjeant was in capital form, and gave one of his best witty addresses to the jury. The judge, in summing up, however, recalled their minds to realities, and painted the defendant in the blackest colours. When he concluded his address it did not seem that the jury had much to consider, but, to the astonishment of everybody, the foreman asked leave for them to retire. As the usher was swearing them in, the little Jewish solicitor, with a face beaming with smiles

and with his eyes turned towards the jury-box, said, "Serjeant, upon my soul I think we shall get a verdict," to which the reply was, "How do you think that I or anybody else can get a verdict if you flash your infernal Israelitish countenance before the jury in that way?" Not the least abashed or offended, the little man roared with laughter, and exclaimed, "Capital, Serjeant, capital; you must have your little joke." Indeed, on reflection, once cannot but be struck with the equanimity with which the Jew bears all the abuse that is poured on his nation. It would be interesting to speculate as to the cause of this, but sufficient to remark here that his attitude is probably on the whole wise. Mr. Montague Williams

tells of an extraordinary instance of this indifference to national sentiment, which he witnessed on another occasion, when Ballantine, as his senior, was acting in a case along with the solicitor before referred to. It happened that one of the hostile witnesses also belonged to the Jewish race. Just as the Serjeant was about to cross-examine him, the solicitor whispered in his ear, "Ask him, as your first question, if he isn't a Jew." "But you are a Jew yourself," said Ballantine in some surprise. "Never mind, never mind;" replied the little solicitor eagerly; "please do, just to prejudice the jury." That story in one sense illustrates the Jew's secret of success—his terrible keenness; but, however desirable

it is that a solicitor should be zealous in his client's cause, few will argue that he should sink all considerations of national pride. But, as before explained, the conduct of the solicitor in question was typically Jewish.

The same ruthless quality of mind is illustrated by an experience which Williams himself had when he was once appearing on behalf of a Jew charged with the not unusual complaint of fraud, conspiracy, and false pretences. Two friends, fellow tribesmen of the accused, had put up the money for the defence. As Williams was then at the height of his fame his fee was a heavy one, and on the day of the trial the two friends seated themselves in Court prepared to witness a big fight.

Their counsel came in, stated with characteristic quickness a technical objection to the charge, the judge at once saw it, explained it to the jury, and directed them to find the accused "Not Guilty." They did as directed. The case then ended prematurely. In leaving the Court Williams heard one of the Jews say to the other, "Call this a long day; upon my soul we've been swindled." They evidently thought nothing of the acquittal of their friend. The mind of the Jew was, as usual, hankering after the money's worth.

The same trait of character provided the basis of the following charge given to a jury by a County Court judge whose name is unknown to us, but whose

summing up on this occasion was a masterpiece of pawky humour, and, really, if humour is at all allowable in a charge to the jury, a model of how to interweave it with the graver matter in hand. A Jewish pawnbroker was charged with receiving stolen goods. In the course of the trial certain documents were produced which shewed that, besides being a pawnbroker, he was also a money-lender. The judge summed up as follows :— "The prisoner, who is by trade a pawnbroker, carries on his business in the town of Swansea. The facts are very simple. It is alleged that on two different occasions he received watches which for the moment we will call A and B, and that at the time he received these watches

he, by exercising those faculties by which he has been endowed, and which any ordinary man must possess, knew that they had been stolen. Now the answer to that is what is termed in law an alibi. It is said he could not have received the watches A, because the day on which they were said to have been purchased at his shop was his Sabbath day. It was a Saturday, which as you know is the Sabbath of that most ancient people, and it is said that this good man could not have received the watches on that day, because at the time when they were alleged to have been purchased he was at his synagogue praying. It is also urged in his defence that the day on which the watches B were dis-

posed of at his shop was a day of fasting and humiliation among the Jews, that he was very strict in his religious observances, and that it is the custom for Jews to pass that day in their synagogue in prayer. Witnesses have been called to prove this, those witnesses being his daughter and his son. Well, gentlemen, far be it from me to insinuate that it is so, but it is an observation that I must make that there is the natural inclination of the child to protect its parent. I don't for one moment say that they came here to state what is untrue; that is a matter entirely for you. Then his foreman gave evidence. Well, gentlemen, there again you know he is a servant in the house, and is dependent upon

his master for his daily bread; but that again is a matter entirely for you. One thing, too, has struck me in the progress of this case, and I'm sure it must also have struck you. Certain documents were found in the prisoner's possession relating to dealings of the nature of usury which he had with people of his native town. Now while the learned counsel was addressing you I was adding up the amount of interest which this extremely religious man was in the habit of exacting from his clients, and I find it amounts to the somewhat exorbitant sum of from 180 to 200 per cent. Now it has occurred to me—I don't know whether the same idea has occurred to you—that this is just the sort of man who,

either going to or returning from his synagogue, might call in at his shop just to see how matters were going on; but that also is entirely a matter for you." In two minutes and a half the jury returned a verdict of guilty.

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